



Re: Outreach - Vested Rights - Urgency Ordinance No. 3246 - Request for Input

Joe & Karen Plummer

to:

kgriffin@co.slo.ca.us

10/22/2013 11:04 AM

Hide Details

From: Joe & Karen Plummer <plummervineyard@yahoo.com>

Kami

I will be unable to attend your input session. Following is my input on the "Vesting" definition:

--In Section 1(a), item 3, add "ANY" before the word "fencing"; not all vineyards require fencing and some do not install fencing until a need is defined (deer pressure, etc)

--Strike all reference to wells and irrigation. This category is too complex to meaningfully define. Do you mean 50% installed on 100% of the planting area or 100% on half of the area? How do you define the amounts? Labor expended? Materials installed? Payments made? Costs accrued? Each project will likely approach irrigation installation differently and trying to apply a single standard will be impossible. Clearly, this one is a can of worms that I don't think you want to open and I don't think is necessary.

--When discussing contractual obligations for plants, you may need to be more specific. Some folks may contract for plants to be delivered over a multi-year interval. You need to recognize that a contractual obligation for plants, contracted for 2014 delivery, may be a fact of life.

Thanks

Joe Plummer



RE: Outreach - Vested Rights - Urgency Ordinance No. 3246 - Request for Input

Steve Sinton to: kgriffin

10/22/2013 10:28-PM

History:

This message has been replied to.

Kami,

My general thought is that the Department's initial draft proposal was fair to those who had made significant investment in new plantings to qualify as vested and that the last draft proposal was extremely unreasonable in that it would prevent nearly everyone from qualifying. My continuing point at the Supervisor's hearings was that we need to discuss the language with other stakeholders and County Planning, not comment on it. Discussion allows explanations and interaction and comments provide for little of the former and none of the latter. So I am hoping that you are going to proceed with the rumored meeting on November 6 and I hope it will be a conversation and not just another damn hearing.

Having said that, I will briefly comment that most of the materials I have reviewed on vested rights reflect a financial and/or contractual commitment by the party claiming a vested right. The problem with absolute rules is that what is a significant investment for a landowner with five acres who wants to plant three would be trivial for someone who plans to plant 100 acres. And without investigation, it is impossible to know if someone has a real contractual commitment, but having ordered plants or trees from a nursery may be a real vested interest and should be recognized as such. The bottom line is that the rules need to be both fair and reasonable and the last draft was neither.

I hope we will be able to meet, listen and discuss the views of those who are claiming vested rights and those who want strict limits. That is the only way we will find the balance needed to make this work.

Steve Sinton



Vested rights

Grant Matthewson

to:

kgriffin@co.slo.ca.us

10/26/2013 01:25 PM

Cc:

"Chris..8310@yahoo.com"

Hide Details

From: Grant Matthewson <68ratmtr@att.net>

To: "kgriffin@co.slo.ca.us" <kgriffin@co.slo.ca.us>

Cc: "Chris..8310@yahoo.com" <Chris..8310@yahoo.com>

Vested rights or not, it makes no sense to continue to plant and irrigate ANYTHING in an area over which there is little or no water.

Those of us east of Union and Geneseo roads would agree 100% to the statement above.

The actions of the land owners who were busily planting, and who CONTINUED to plant during and after all of us were educated on our water basin crisis proves their absolute greed and disregard for their neighbors, many who lived and farmed here LONG before their arrival. Why should those very people receive special treatment and be allowed to continue to jeopardize all of us?

STOP ALL DEVELOPMENT until the basin can support those who have lived and worked here for generations!

Thank you for the opportunity to personally respond.

Grant and Donna Matthewson
8265 Settlers Place
Paso Robles, CA 93446
68RATMTR@ATT.NET

RANCHO DE SUENOS, LLC
San Miguel, California
(213) 892-9333
tbclearsky@roadrunner.com

October 25, 2013

Ms. Kami Griffin, Acting Director
Department of Planning and Building
County of San Luis Obispo
976 Osos Street, Room 300
San Luis Obispo, California 93408

Re: Urgency Ordinance No. 3246 - Vesting

Dear Ms. Griffin:

I am a landowner in San Miguel who is quite distressed about the effect of Urgency Ordinance No. 3246 (the "Ordinance"). The adverse financial impact on me, as others, is immeasurable. Certainly, we all recognize that we have a water problem in the County. But this is a problem which we all share and we should all bear some responsibility to solve it. The Ordinance seems to fail miserably in this regard. It punishes many of us seeking to farm our land, while essentially rewarding and enriching others who just happened to have planted earlier. This seems entirely inequitable. In my case, for example, the Ordinance will result in my land, which has been in the family for over 50 years, being rendered somewhat useless, while my neighbor continues to irrigate alfalfa hay with thousands of gallons of water running 24/7, fully immune to the effects of the Ordinance. Logically, there should be a comprehensive water conservation plan in the County which provides an equitable sharing of the burden. I believe we would all get behind such an effort. But the Ordinance is inequitable and flawed in this respect.

Accordingly, I respond to your October 22, 2013 email regarding the upcoming determination to be made on "vested rights." As now proposed, the determination will further aggravate the inequities and financial damage caused by the Ordinance. However, alternatively, the determination should be used to ameliorate the inequitable impact that the Ordinance is having. This can be done through some reasonable modification to the vested rights concept. I offer several suggestions which could be adopted, singularly or together:

1. First and foremost, the conjunctive test for compliance should be changed to a set of disjunctive tests; that is, a project should only have to meet one of the series of vesting tests in the proposed ordinance, not all of them. The conjunctive test, as now presented, ignores the fact that substantial investments have already been made by landowners in their projects, even if those investments do not meet the proposed vesting thresholds. With due respect, the thresholds are quite arbitrary and do not seem to reflect farming realities. In my own case, I entered into a 25-year vineyard lease in May, well before the Ordinance. Since then, at great expense, the project has proceeded with all of the required due diligence, studies, reports, etc., all fully in compliance with the law. I have cancelled my cattle lease on the property. A substantial amount

of work has been done, at great expense, in bringing the project along. In short, we have done everything right. My lease is binding; it has the sanctity of contract. Therefore, the right to plant vineyards on my property is fully "vested" in the lessee, in every legal sense of the word. So if a test is to be applied to determine when rights are vested, the test should not require satisfying all of the proposed arbitrary criteria. A more rational and realistic approach would be to set forth a broader list of criteria, any one of which would be sufficient to qualify for vesting.

2. One such criterion which is very important would be evidence of significant actual out-of-pocket expenses incurred on a project as of the Ordinance effective date. For example, there could be a threshold expenditure amount, either a total or on a per-acre basis, incurred prior to the effective date, and if that amount was exceeded, the rights would automatically be vested. This would be a viable measure of the progress of the project as of the date of the effective date, and it would recognize the investment made by the landowners as of that date. It would be far more sensible than the arbitrary cut-off date in the Ordinance.

3. The vesting tests should be guidelines, subject to reasonable application, not absolutes. I realize that there is some administrative appeal to having absolute criteria, but no two situations will be exactly the same, and there is too much at stake here to damage landowners just for administrative convenience. This is clearly one of the flaws in the tests as now proposed.

4. Unquestionably, under any circumstances, a *de minimis* acreage exemption should be included. That is, any parcel which is being planted which is no greater than a specified number of acres, should automatically be exempted. This is clearly logical, and would make the Ordinance more palatable to many landowners. (I might add that a *de minimis* provision might save the Ordinance from the many legal and constitutional challenges which it will inevitably be facing).

I respectfully request that these and related vesting suggestions be given serious consideration. This is a matter of grave concern to me and my family, as well as many other landowners. I am not seeking any special advantage, but I do want all landowners to be treated fairly.

Please add me to your correspondence list. I would greatly welcome the opportunity to speak with you or your staff further if useful.

Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Tim C. Bruinsma". The signature is fluid and cursive, with the first name "Tim" and last name "Bruinsma" clearly legible.

Tim C. Bruinsma, Manager



Thomas M. Duggan
Linda Somers Smith
Jane E. Heath
Janet L. Wallace

Tel 805-546-2060
Fax 805-546-8865

Address 560 Higuera Street, Suite B
San Luis Obispo, CA 93401
Web www.dshlawfirm.com

Of Counsel:
Richard N. Racoullat
Timothy A. Dolan

October 25, 2013

By Email
kgriffin@co.slo.ca.us

San Luis Obispo County Planning Department
Kami Griffin, Assistant Director
1055 Monterey Street D170
San Luis Obispo, CA 93401

Re: Vested Rights Outreach for Urgency Ordinance No. 3246

Dear Ms. Griffin:

For your consideration, based on input from our affected clients, attached please find a proposed procedure for County staff to follow when presented with a request for an Ordinance 3246 vested rights determination. We believe the procedure presented provides the right balance between recognizing the substantial financial investments farmers have made prior to the enactment of Ordinance 3246 and the County's need to control water extractions from the Paso Robles Groundwater Basin.

Please see a summary of the proposed 4-part procedure below. The attachment contains the legislative language we propose.

1. **Appropriate Zoning:** Part 1, as adapted from the County's original proposed procedure, requires the area intended to be planted be located in an area zoned for agricultural use and with the appropriate geography and soil for planting the intended crop. This is intended to be a threshold requirement that ensures all applicants intend to plant on land that is suitable for such planting, both legally and physically.
2. **Well Permit:** Part 2 of the procedure is intended to more closely align the requirements to California vested rights case law. The leading vested rights case in California, *Avco Community Developers, Inc. v. South Coast Regional Commission*¹ focuses heavily on the issuance of a building permit as the threshold requirement for obtaining a vested right for subsequent construction. Because the County does not require permits for irrigated agriculture, a well permit is the only checkpoint at which an applicant would request County approval related to the proposed planting area. As such, it is the only time in which the County receives notice of an irrigated agriculture project and can exercise its power to stop the project by denying the well permit. By issuing the well

¹ 17 Cal.3d 785 (1976).

Ms. Griffin
October 25, 2013
Page 2

permit, it is reasonable for the applicant to rely on that permit as granting the applicant the water rights necessary for the development of irrigated agriculture on the related land.

3. **Water Rights Priorities:** Part 3 is intended to account for overlying water rights in order to be consistent with the California Supreme Court's determination that water rights priorities be considered when enacting solutions allocating groundwater use.² Appropriative water users have the right to pump water surplus only after overlying users have taken their reasonable share; thus, appropriative users must yield to that of the overlying user in the event of a shortage. This requirement takes water right priorities into account by giving applicants with overlying water rights priority over applicants with appropriative or prescriptive rights.
- a. **Existing Contracts:** Part 4a is also adapted from the County's original proposed procedure and accounts for contractual obligations that are entered into as part of an applicant's overall business plan for establishing an irrigated crop. This requirement intends to account for at least one existing contractual obligation between the applicant and a third party that requires either acceptance of plants that cannot be planted or payment required for failure to complete a contractual obligation, and the applicant's resulting financial damage. The requirement includes various contractual scenarios that are common within the farming industry, including scenarios whereby an applicant has contracted to sell the yield that is produced from the plant intended to be planted or where an applicant must make ground lease payments under a lease that cannot be terminated on its terms when the applicant cannot plant the intended crop.
4. **Expenditures:** Part 4b is intended to account for substantial expenditures that are made as part of an applicant's overall business plan for establishing an irrigated crop. Such expenditures include those that are typically planned and completed in phases, thus any applicant that has completed substantial work in the listed areas has been working on the project area over the course of years and has made a large investment in the project. This requirement would be subject to the County's discretion to determine what constitutes "substantial" in light of all of the circumstances.

Please review the proposed procedure attached and contact me with any questions or concerns. I can be reached via email at lss@dshlawfirm.com or by phone at 546-2060.

Very truly yours,

DUGGAN SMITH & HEATH LLP



LINDA SOMERS SMITH

² City of Barstow v. Mojave Water Agency, 99 Cal. Rptr. 2d 294, 312 (Cal. 2000).

Proposed Vested Rights Procedure

For the purposes of this section, the following terms shall have the following definitions:

"Ground water" is defined as in California Water Code Section 1005.1.

"Financial investment" means expenditures for any of the following activities related to the area intended to be planted: ground preparation (i.e. ripping, disking, and/or tilling); infrastructure installation (i.e. irrigation, stakes, fencing); studies and assessments (i.e. engineering studies, land and soil surveys); required permits and associated assessments; and procurement of marketing and/or design materials (i.e. federal trademarks, logos, labels).

County staff shall use the following procedure when presented with a request for an Ordinance 3246 vested right determination:

Satisfactory evidence that an applicant has secured a vested right to complete site preparation, planting, or sale of product, as described in Section 6.A.4 of Ordinance 3246, consists of evidence of the following four criteria as of August 27, 2013:

2. The vested area intended to be planted is located completely within an area zoned for agricultural use and the area is fully capable of being planted with the intended crop; and
3. The applicant obtained a well drilling permit from the County to pump all water required to supply the area intended to be planted and said well had been drilled; and
4. The applicant had an ownership or leasehold interest in land overlying the Paso Robles Groundwater Basin and all ground water that is extracted from the Paso Robles Groundwater Basin will be used only on the overlying land, subject to reasonable and beneficial use restrictions under Article X 2 of the California Constitution; and
5. The applicant had a business plan in place for the area to be planted as evidenced by both of the following requirements:
 - a. The applicant had at least one of the following contractual obligations related to the area intended to be planted: (i) the plants intended to be planted were delivered to the applicant; (ii) the applicant was contractually obligated to accept future delivery of the plants intended to be planted or to reject future delivery but pay the full balance of the contract price; (iii) the applicant paid a non-refundable deposit toward the purchase of the plants intended to be planted equal to or greater than 20% of the total contractual commitment; (iv) the applicant was contractually obligated to deliver all or part of the yield produced from the plants intended to be planted and such yield cannot be substituted due to the nature of the crop and/or terms of the contractual commitment; or (v) the applicant was contractually obligated to make ground lease payments for the land upon which the intended crop would be planted, which lease cannot be terminated on its terms due to the applicant's inability to plant the intended crop.
 - b. The applicant had expended substantial financial investment toward the establishment of the irrigated crop.

PRO Water Equity, Inc.

Paso Robles Groundwater Basin Overliers for Water Equity

www.prowaterequity.org
info.prowaterequity@gmail.com
www.facebook.com/ProWaterEquity
P.O. Box 255, Templeton, CA 93465

October 25, 2013

Kami Griffin, Acting Director
Department of Planning and Building
San Luis Obispo County
976 Osos Street, Room 300
San Luis Obispo, CA 93408

Re: Vested rights determination process and procedure

Ms. Griffin,

PRO Water Equity appreciates the opportunity to participate in the outreach effort to define a process and procedure to be used when presented with a request for an Ordinance 3246 vested rights determination. We understand that the current effort is related solely to the vested rights determination, and will not address offsets or other related issues.

Since the purpose of the Urgency Ordinance is to protect the basin from further harm, we believe the right and moral choice for all overlayers is clearly to respect the intent of the urgency ordinance. Plants in the ground as of August 27, 2013 should be the criterion used.

However, since an exemption is allowed where "satisfactory evidence can be provided that, prior to the effective date of this Ordinance, an applicant has secured a vested right to complete site preparation, planting, or sale of product", we appreciate the opportunity to comment on the process and procedure to be used.

We support the adoption of the draft resolution regarding vested rights that was presented to the Board of Supervisors on October 1, 2013 and approved as to form and legal effect by County Counsel, with the following suggested modifications (in red). Loosening the criteria would render the ordinance virtually ineffectual as the restrictions would be so weak that most petitioners would be able to move forward with planting and push the basin more than an additional thousand acre-feet further into overdraft.

1. Satisfactory evidence that an applicant has secured a vested right to complete site preparation, planting, or sale of product, as described in Section 6.A.4 of Ordinance 3246, consists of evidence that the vested area intended to be planted was fully capable of being planted with its intended crop and meets all of the following requirements and time limitations:

a. 100 percent of the area intended to be planted was prepared for planting prior to August 27, 2013, including all of the following: (1) evidence that the area that is intended to be planted has been disked, tilled or ripped

Mission Statement: To promote the health, safety, common good and general welfare of the community by advocating for the stabilization and sustainability of the Paso Robles groundwater basin for the benefit of all overlayers.

as appropriate for each specific crop type, (2) if the crops are intended to grow in rows, the rows have been surveyed and staked or clearly identified, and (3) fencing if required to maintain the crop has been installed; and

b. All wells and at least 50 percent of the irrigation infrastructure required to supply water to the area intended to be planted (such as tank, pumps, underground piping, reservoirs) were installed as of August 27, 2013; and

c. As of August 27, 2013, either (1) the plants intended to be planted (i.e. rootstock) were delivered to the applicant, or (2) the applicant was contractually obligated to accept delivery of the plants intended to be planted during 2013 or 2014 and all contractual conditions precedent to accepting future delivery of said plants were satisfied.

2. Persons or organizations wishing to rely on the exemption described in Section 6.A.4 of Ordinance No. 3246 to establish new or expanded irrigated crop production, and/or to convert dry farm or grazing land to new irrigated crop production, will provide the evidence described in Section 1 above to the Director of Planning and Building prior to establishment of, and/or conversion of dry farm or grazing land for, new irrigated crop production, who will review the evidence submitted and render a written decision.

3. Any aggrieved person may appeal the decision of the Director of Planning and Building described in Section 2 above directly to the Board of Supervisors using the procedures otherwise set forth for appeals to the Planning Commission in Subsection 22.70.050.A of the Land Use Ordinance, Title 22 of the County Code. We suggest the fee for filing such an appeal be set at \$100 because of the financial hardship many small landowners suffer as a result of declining groundwater levels.

By establishing this "bright line", growers who can provide evidence that they meet these criteria should receive approval from the Planning Director. However, if they do not meet these criteria, the determinations should instead be made by the Board of Supervisors at a properly noticed public hearing. Only if this determination is done in public, can the integrity of the process be protected.

There should be a cut-off date after which vested rights applications will no longer be considered. We suggest the date of December 31, 2013, which will allow plenty of time after the Board of Supervisors provides direction on November 26, 2013.

Applicants should also be required to complete a standardized application form to ensure that the same information is collected from each applicant. This form should include enough information to determine whether the specified area is eligible to be considered as a vested area using the criteria listed above. A map which delineates this area as well as photo documentation of the site as of August 27, 2013 should be included with the application.

Although evidence of basin decline and the potential for actions to limit pumping have been well known for years (as outlined in the Paso Robles Groundwater Basin Management Plan, dated March 2011, for example), some growers have gambled that they would be able to complete planting before any regulation would apply to them. Planting can still continue under the urgency ordinance as long as offsets are provided.

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When considering the issue of vested rights, the vested rights of existing residents and irrigated agricultural operations must also be considered. These parties have substantial investments in their properties, homes, and crops. In order to balance the basin, any new water uses will cause the need for purchase of additional supplemental water (assuming it exists) and/or further cutbacks. All new water uses will impact the existing landowners in a negative manner.

We look forward to further discussion of this issue.

Sue Luft, President
Dianne Jackson, First Vice President
Maria Lorca, Second Vice President
CC Coats, Secretary
Jan Seals, Treasurer



Re: Outreach - Vested Rights - Urgency Ordinance No. 3246 - Request for Input

bethmccown to: kgriffin

10/29/2013 11:41 AM

History:

This message has been replied to.

Hi Kami,

I have given a lot of thought to this and tried to write out many different versions of what a vested right should be in this context. Not easy, as I am sure you know. I have come to the conclusion that although we all would like a high degree of specificity in the guidance so that staff can efficiently process the requests, I do not think it is workable. I have found that when you get specific, you run the real risk of being arbitrary because folks each do their farming tasks so differently. One size just doesn't fit all.

I am hopeful that the small number of vested rights applications (hoping it has stayed small..) will relieve the burden on staff. I really think it has to be done on a thoughtful, case-by-case basis. We need a definition that provides for those who have made the investment in time, labor, and money such that they would be significantly "harmed" if not allowed to proceed. I recommend we use something like the following definition:

The vested rights definition should allow for, as of August 27, 2013,

1. Substantial completion of facilities, land preparation and planting tasks;
OR
2. Expenses incurred for at least 50% of the total investment amount anticipated.

I hope this is helpful and look forward to hearing more from you. Best regards, Beth McCown



Vested Right regarding Urgency Ordinance

Cindy Steinbeck

to:

kgriffin@co.slo.ca.us

10/30/2013 03:14 PM

Hide Details

From: Cindy Steinbeck <cindysteinbeck@yahoo.com>

To: "kgriffin@co.slo.ca.us" <kgriffin@co.slo.ca.us>

Vested Right as it relates to Paso Robles Ground Water Basin Urgency Ordinance

Purchase of land with intent to plant irrigated crop prior to Urgency Ordinance being passed

- a. Personal financial investment in land
- b. Bank loans
- c. Bank documentation – profit loss projections, initial cash outlay vs. income projections

Contracts in place prior to Urgency Ordinance being passed

- a. Winery
- b. Nursery

Non-recoverable financial expenditures in preparation to plant prior to Urgency Ordinance being passed

Cindy Steinbeck
Steinbeck Vineyards & Winery
5940 Union Road
Paso Robles, CA 93446
805.238.1854
www.steinbeckwines.com



Re: Outreach - Vested Rights - Urgency Ordinance No. 3246 - Request for Input
Jolesnanik
EXHIBIT C
to:
kgriffin
10/30/2013 02:05 PM
Hide Details.
From: Jolesnanik@aol.com

Ms. Griffin,

First of all, thank you for asking for input on this matter.

My personal opinion is that there should be no consideration given to this issue of "Vested Rights". If I understand the term it simply means that if the vineyard had financially committed to the planting (as an example) by spending the money or committing to purchase orders that could not be changed, etc. the result of which would have an adverse effect on their operations.....we should make allowances for that.

I have been fortunate to have worked for a very large company and to have owned my own small business. The result of sudden, unexpected and unpleasant circumstances over which you have no control...are the same. You adjust to the change in business climate, adapt to the new realities and become smarter about your business enterprise. Those who may be affected over the next two years should be devoting their time to become smarter about what they do (and they have very smart and experienced people working for them) so they can not only exist but grow in the changed business environment. Instead they know (because the Board of Supervisors has told them) that the BOS and the County of SLO are fearful of a law suit. It is not what is right for the area it's how can we appease those with the deep pockets and still get re-elected? This is evident by the actions of the company that acquired Justin Vineyard (I believe it's called Paramount). During the 45 day moratorium they stopped putting in more water lines and even covered their various stacks of PVC pipes. They did perform some work at night until the county received enough complaints. After the 45 days had passed and the BOS had voted for the 2 year extension.....softened, by Mr. Mecham and Ms. Arnold to get their vote, from a 2 for 1 to a 1 for 1 replacement of water used and by talk of "Vested Rights", Paramount uncovered all of the PVC and has been laying pipe and building the necessary structures to accommodate the new vines, which I'm 100% sure they will be allowed to plant. I wouldn't be a bit surprised to learn that they have already gotten the word.

Additionally, when large organizations like Paramount with deep pockets and experienced and intelligent personnel, evaluate new ventures they don't just flip a coin and say "heads we do and tails we don't", they perform what is called due diligence. They look at all aspects of their proposed business venture before proceeding. The most critical, and obvious, in the grape growing business is, you guessed it, WATER! The Paso Water Basin has been in decline since at least as far back as 1981 and with the significant growth in housing and agriculture, the basin has experienced dramatic declines in the most recent 10 to 15 years. I don't think for a minute that the successful family that owns Paramount (and with it Justin Vineyards) had no knowledge of the water situation in the Estrella El Pomar area.....especially since there were two separate committee reports (2003 and 2006) which specifically identified this area as an area of concern due to the decline in Basin water levels. You can verify this with Mr. Mecham. He was on both of those committees and still did nothing to prevent the development of this area for high water usage agricultural purposes. Also, Paramount is in the water business. They own Figi Water and more, from what I'm told. They know what to look for and where to look. They didn't miss a thing. They knew what they were doing, they made their plan and now they are executing that plan with precision.....and a little help from the BOS.

Finally, it seems to me that, when considering the issue of vested rights the county (BOS) is saying.....If we make decisions that, by our measure, result in an unfair financial impact, we should attempt to be fair to those we have unintentionally burdened. The rural residents of the county have invested hundreds of thousands (and in many cases millions) of dollars in their homes and small agricultural businesses. In the rural environment, no one is more "vested". Yet the County has continually made decisions to aggressively grow the county in both population and agriculture while possessing full knowledge of the impact their decisions were having on the water supply. When the wells of many rural residents went dry and many more are in fear of the same...when the life that they have worked so hard for is on the brink of collapsing around them, including the value of the property they hold so dear.....the County's offer is to waive some fees and offer low interest loans. No rural resident or small agricultural business owner should be penalized financially for the bad decisions of our elected officials. If this is an unfair position on my part then offer the very large vineyard owners, that the County fears, low interest loans instead of "vested rights".

Thank you for allowing me to express my views.

Jim Olesnanik

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Water Rights Vested by Court Action

John Texeira

to:

kgriffin

10/30/2013 07:08 PM

Cc:

ahill, "Bruce Gibson", "Frank Mecham", "Paul Teixeira"

Hide Details

From: "John Texeira" <tex@tcsn.net>

Kami,

Water rights in the State of California are based on case law as established by the Courts. The Board of Supervisors has no business tampering with the water rights of individual land owners. Water rights are tied to an individuals property rights. Stake holders have "interests", landowners have "rights" as established by the Courts.

Websters Dictionary defines the word "vested" as "not in a state of contingency or suspension; "fixed".

In the case of Water Rights, they are "fixed" by the Courts, not the Board of Supervisors.

The only way to insure your water rights are "fixed" is to go to court and litigate those rights. To engage in any other discussion is to begin to negotiate your rights of the individual away to the "politicians". The Board of Supervisors is tampering with an issue that will be resolved by the Courts.

John Texeira
Paso Robles



Re: Outreach - Vested Rights - Urgency Ordinance No. 3246 - Request for Input
Serena Friedman, MD
to:
kgriffin
10/31/2013 12:48 AM
Hide Details
From: "Serena Friedman, MD" <serenasoffice@aol.com>

Dear Planning Dept - Board of Supervisors SLO

In response to your proposed "Ordinance 3246 Vested Right Determination" which I already believe to be an inappropriate and wrong action on the part of the Board of Supervisors, who should instead have concentrated on finding solutions = water sourcing, not wasting resources to be policemen and add not ONE drop more of water to the area, I must comment on the need to change the criteria you are using to establish Vested Rights. For the legal record the prior decisions of the Supreme Court, including Koontz vs the Supreme Court, protect the legal rights to land and water usage by landowners. The legality of the Emergency Ordinance is very very open to question. Your right to restrict "vested rights" also is bordering on illegality.

Vested rights should include:

1. If a project was started
2. If the ground has been broken
3. If water is present and preparation for irrigation is planned for a crop
4. If a contract was entered into by August 27, 2013, EVEN with a future date for completion
5. If a financial commitment toward a project has been undertaken by August 27, 2013, risking financial loss
6. If plants, vines, supplies (example trellis system, pipes) have been purchased already
7. NO requirement that 50% of the irrigation infrastructure be in place: This is crazy. When a project is undertaken the supplies may be purchased but who arbitrarily decided this absurd requirement: There is a commitment to a project and setting a required percentage of irrigation installation is ridiculous: Ask any farmer!
8. There should be NO requirement for surveying or staking of the plants as the purchase of the plants of course is enough to put the grower at risk and it is obvious they intend to survey and stake and plant. Ask any farmer!
9. Don't you know that fencing is the last thing you do, so requiring it to be already installed before a project is done is absurd. Ask any farmer!

In conclusion spend your time forming a water district, bringing new water to the area for a secure and reliable water supply for everyone and stop wasting money on enforcement and more and more government regulations. Your leadership in this regard is badly needed.

What has the Board of Supervisors done so far since August 27th to bring in a reliable water supply to the basin? Where do you get your legal rights to impose Draconian rules on the citizens, depriving them of the use of their land and water rights?

Serena Friedman, M.D.

Four Sisters Ranch, Paso Robles

Cell: 818.266.9977 ~ Office: 805.526.9242

Vineyard: 805.467.2417 ~ Fax: 805.526.3768

serenasoffice@aol.com

2876 Sycamore Drive, Ste. 304, Simi Valley, CA 93065

www.foursistersranch.com www.serenasvineyard.com

Skype: winefrompasorobles

....passion flows from our wine.... Page 16 of 56



Vested Rights
Randall Jordan

to:

kgriffin

10/30/2013 05:46 PM

Hide Details

From: "Randall Jordan" <randall@palomarhomes.com>

To: <kgriffin@co.slo.ca.us>

Kami,

Board of Supervisors has no business regulating anything that hinders personal property rights.

Our elected officials can and should **recommend** measures to alleviate any drought conditions based on "real and hard" evidence.

Courts have proven that a property owner has land and water rights beyond the scope of County Supervisors.

Take note of Santa Barbara County and the court case settled there in favor of farmers property rights on his own land.

This case proved that individual landowners rights trump cities and municipalities rights to water.

County Board is treading on dangerous ground that will ultimately lead to law suits and litigation.

Randall Jordan

Republican Central Committee Delegate to CRP
North County Tea Party Member.

Daniella Sapriel
4015 Almond Drive
Templeton, CA 93465
805-226-8575

October 31, 2013

Kami Griffin
Acting Director
Planning Department

Re: Vested Rights Exemption to Interim Urgency Ordinance

Dear Ms. Griffin,

Thank you for giving stakeholders an opportunity to weigh in on the criteria to be adopted in determining who is entitled to be exempted from the ordinance. I am writing as a rural resident and landowner in the El Pomar District, across the road from the Roll Global Vineyard. I have read the Roll Global request for an exemption from the ordinance.

FAIRNESS

A claim for exemption based on "vested rights" is an **EQUITABLE** claim, and therefore rests on equitable principles of **FAIRNESS**. Any **EQUITABLE** claim for exemption from a lawfully passed statute or ordinance must therefore involve a **BALANCING** of **EQUITIES**. That's a fancy way of saying it has to be **FAIR**. In simple cases, this balancing is limited to a determination that the landowner has made such a significant investment of time and resources that it would be **UNFAIR** to stop the project short of completion. So, in an ordinary situation, the investment made by Roll Global could be determined to be so substantial that it would be **UNFAIR** to stop the completion of their planting on the 700-acre property they purchased in 2012. That's what Roll Global and their lawyers are counting on. In fact, they are apparently so confident that, after briefly stopping after the Ordinance was passed, in the last few weeks they have restarted their infrastructure and pipeline construction on the property, confident that they will be able to plant.

However, the Urgency Ordinance passed on August 27 and ratified for two years on October 8 by definition requires that the determination of **FAIRNESS** look at **FAIRNESS TO ALL AFFECTED OVERLIERS**. The Board deemed it necessary to pass an Urgency measure after specifically finding that the depletion of the Paso Robles Groundwater Basin and the impact of such depletion on **ALL THE OVERLYING PROPERTIES AND RESIDENTS** who draw from the affected portions of the Basin was a threat to public health, welfare and safety.

Because of the impact on NEIGHBORING properties, looking JUST at the amount of money or the percent of completion of a project to determine if an ag user has a "vested right" is NOT FAIR. In addition to looking at the amount of money and resources spent by the ag user who (unless exempted) would be covered by the ordinance, FAIRNESS requires that the impact on NEIGHBORING AREAS also be considered. In addition, the "due diligence" of the claimant MUST BE CONSIDERED.

Although Planning and Staff would like to find a simple, mathematical equation that applies equally to all properties who have filed claims for exemption, such a "bright line" formula not only doesn't exist, it would NOT BE FAIR. And FAIRNESS, NOT "SIMPLICITY" is the appropriate standard when determining whether an applicant should be exempted from a lawfully passed ordinance on EQUITABLE grounds.

So, of course Planning and Staff should look at the amount of money spent, and the amount of time and resources expended, but it should also equally weigh other factors, in order to be FAIR TO EVERYONE, NOT JUST THE AG USERS. For example, the small 4-acre parcel seeking exemption might have little impact on the underlying groundwater basin, and it seems FAIR to let a small family-owned farm continue, regardless of whether it has spent much money, because the farmer's livelihood and continued existence may be at stake. That FEELS FAIR to most people.

But when examining the Roll Global claim, there are other factors to be examined, and other questions to be asked. For example, Roll Global is a very sophisticated, highly experienced land and water based conglomerate, with hundreds of thousand of acres of farmland in neighboring Kern County and elsewhere. They bought the approximately 700-acre Hardham Ranch (now Roll Vineyards) in late 2012. The property had been historically dry-farmed, and it was well known locally (including to some who worked on the Roll Vineyard) that the decedent, botanist Clare Hardham, vigorously opposed converting the property to vineyards prior to her death. Nevertheless, as soon as they purchased the property, Roll Global immediately began ripping and preparing the property for vineyards, including drilling 6-8 (at least) deep wells with huge casings and 100-HP pumps. Some would call this SPECULATING.

Roll Global completed this purchase and started the project IMMEDIATELY, KNOWING THAT A LEVEL 3 SEVERITY had been declared in 2011 and that the Paso Robles Groundwater Basin was being severely taxed by three years of drought. NEVERTHELESS, and with NO THOUGHT for how their pumping would affect neighboring properties, they IMMEDIATELY CONSTRUCTED AND FILLED 4 reservoirs, of which two alone hold 60 MILLION GALLONS OF WATER. They also have watered their plants extensively, because their plants are larger and more luxuriant than other new plants in the area. They did so KNOWING that such pumping would overtax the already strained Basin. Dana Merrill, of PRAAGS, and Mesa Vineyard Management, which did work for the Roll Global vineyard, implicitly admitted in public comment that the big ag users knew the aquifer was being taxed by their pumping when he asked the Board to put off a decision for a few months because they were "at the end of the irrigation season" and as soon as they stopped irrigating maybe

the aquifer would recover over the winter. So it is true that Roll Global has expended millions of dollars on their speculative land venture, but it DOESN'T FEEL FAIR to allow them to complete their project with total disregard for the fact that, within months if not weeks after they started irrigating and filling their reservoirs, which should never have been permitted and graded, NUMEROUS NEIGHBORING PROPERTIES lost their wells. My well went dry in June, my neighbor to the south went dry in May, my next door neighbor across the street went dry in June, the 83-year old widow to my east has been waiting for a new well for months as hers is failing. These are not anecdotes. These are facts.

To all of us in the El Pomar/Almond Drive/Creston Road area in which the Roll Global Vineyard sits, IT DOESN'T FEEL FAIR to allow them to complete the next 300 acres, while we watch our neighbors go dry.

Yes, the Roll Global attorneys have written a very nice story about the Justin winery and its local roots and their commitment to water conservation etc., and they have enumerated costs in the hundreds of thousands of dollars for plants etc., but the story is just that: A Story. They reveal they invested in nursery stock, but they don't reveal they also bought Vintage Nurseries, a premiere rootstock nursery. How much have they really lost if they have to resell the plants elsewhere at a time when demand for plants far outstrips supply? They claim they have stopped construction, but while they have stopped PLANTING, they are still AS OF THIS WEEK BUILDING INFRASTRUCTURE AND BURYING HUGE WATER PIPES. They claim to use minimum watering techniques, but their plants, which were planted just this year, are so luxuriant they are either being watered excessively or they are genetically modified.

So the standard for what is FAIR for the small family farmer who has invested his or her life savings in a 4-acre parcel is not necessarily the same standard to be applied to a sophisticated land and water conglomerate owned by billionaire land barons that swooped in to make a highly speculative land purchase in an area of known drought and low water level, and then spent millions of dollars to PLANT AND PUMP as fast as possible to avoid the restrictions that they knew or should have known were inevitable. They KNEW OR SHOULD HAVE KNOWN the effect of their over planting and over pumping would have on their neighbors. They knew and didn't care, and it is NOT FAIR to let them complete planting hundreds of additional acres of speculative land.

I know it would be SIMPLER if we could give you a FORMULA for determining who gets an exemption and who doesn't. But FAIRNESS IS A FEELING, NOT A FORMULA. If FAIRNESS was strictly a "rational" decision, as some ag users will argue, based on percentages and numbers, Solomon would have cut the baby in half. In his wisdom, he FELT in his heart that FAIRNESS, not logic, was the wisest course.

Please, don't be taken in by slick briefs by sophisticated corporate lawyers who think they can just ROLL OVER anyone in their path. The Roll exemption claim may sound LOGICAL. But IT DOESN'T FEEL FAIR. Thank you for your consideration.

October 28, 2013

San Luis Obispo County Planning Department
Kami Griffin, Assistant Director
1055 Monterey Street D170
San Luis Obispo, CA 93401

Re: Vested Rights Outreach for Urgency Ordinance No. 3246

Dear Ms. Griffin:

I appreciate the County's invitation to provide input regarding the criteria for the vested rights exemption to Urgency Ordinance No. 3246. I have given much thought to how the County can both support the growth of smaller boutique vineyards, like Lion's Peak Vineyards, and address the current groundwater shortage in the Paso Robles Basin. In response, I offer the following criteria as additional evidence of an applicant's vested right for the County's consideration.

1. Exiting wells: The County should allow applicant's to use existing wells on their land to irrigate new vineyards if those wells were established prior to August 27, 2013. Landowners obtain a right to the groundwater beneath their land when they drill a well and should be able to use that water if they acquired that right before the ordinance was enacted. By forcing landowners to rely on the output of existing wells, this will limit large-scale irrigated crop development while allowing smaller vineyards to expand modestly.
2. Length of land ownership: The County should consider the length of time an applicant has owned his or her land. If the land the applicant would like to develop has been owned and farmed by the applicant for his or her direct benefit for 15 years or more, this fact should weigh in favor of the applicant obtaining a vested right. This would limit expansion overall in the Basin area and ensure that any expansion is that of long-standing grape farmers and those who helped make the Paso Robles appellation what it is today.
3. Acreage for development: The County should consider the overall size of the proposed development. Those projects that are under 20 acres (measuring across affiliates to prevent aggregation of small plots) should be exempt from Urgency Ordinance No. 3246. Such small projects do not use substantial acre feet of water and would likely only be pursued by smaller, locally-owned vineyards. As with the prior criterion, this would limit large development while allowing for small-scale projects to move forward. Such expansion is necessary for smaller vineyards to remain viable and stay in business in the Paso Robles area. Conversely, the County should consider capping the total acreage for approved vested rights projects at 100 acres to ensure large developers are unable to take advantage of the exemption process.
4. Established vineyard and/or winery: Lastly, the County should consider the length of time the applicant has been in business in the Paso Robles area. As part of this, the County

should look to the applicant's dependence upon that business for his or her livelihood and a connection between the proposed development and the applicant's overall business plan.

Please contact me with any questions. I can be reached via email at jsrose06@yahoo.com or via cell phone at 423-1134.

Sincerely,

Jennifer Soni

Jennifer Soni
Owner and Winemaker, Lions Peak Vineyards

October 29, 2013

Hello Ms Griffin,

My wife and I are residents of Templeton and have experience with San Luis Obispo County, as a geographic entity, in a variety of ways beginning in 1976.

This communication is to comment on the water issue in North County. I am responding to your request for comments which I heard on our local radio station. In my opinion the County has embarked on a treacherous journey to take away the property rights of many North County residents. The right taken is the right to use the water underlying their property. Having taken away these rights by force or the threat of force, the taking is now being codified along with an urging to negotiate.

Water law in California has been well established over the past 164 years. The right to water under the land owned by an individual is a beneficial use property right and cannot be taken without just compensation. Beneficial use means the right to utilize real property.

The County, in the process of restricting that property right, seems to be headed in a direction not supported by recent cases, some taken all the way to the Supreme Court. The County, I am certain is fully aware of numerous legal cases, such as: Nollan, Dolan, 1st Evangelical and Lucas, etseq, which protect the rights of persons owning certain property.

The County should be in the business of protecting property not taking property against the owners desire or without compensation. After all why does the County have a Sheriff's Department.

Therefore I urge the County to refrain from taking further action until a complete legal review and/or litigation can be pursued. Failure to do so will place SLO County and the tax payers in grave peril.

Thank You,



Hank and Susan Hohenstein
76 Brewer Street
Templeton, CA 93465
805-226-6768

EXHIBIT C

MEMORANDUM

DATE: October 29, 2013

TO: Kami Griffen

FROM: Dana Merrill

SUBJECT: Suggested Vesting Criteria

I am Vice Chairman of Paso Robles Agricultural Alliance for Groundwater Solutions (PRAAGS); while we appreciate the chance to comment, PRAAGS is not taking a formal position on Vesting specifics. Our organization was formed to work to establish a CA Water District as its exclusive mission. PRAAGS is, however, concerned that the Vesting issue can be damaging to forming a consensus among stakeholders and to individual landowners with projects who have inadvertently become caught in the process. We therefore urge a flexible approach rather than an overly rigid process that leads to conflict. My personal comments therefore follow.

I am an experienced vineyard manager, vineyard owner who has developed and operated in the range of 40,000 acres of vineyards over the past 30 years on the Central Coast. This has given me insight into the wide range of development of vineyard property options and orders of operations to bring a new vineyard into production. I also have broad experience in other diversified row and field crops, both dryland and irrigated.

Some points to keep in mind as to the Vesting issue:

- A. The focus of the Urgency Ordinance (UO) and the related Vesting issue tends to focus on agricultural uses. Agricultural remains the major use in the Basin, understandably since it is the dominant industry and covers the most physical area. We should keep in mind that Ag total use has been relatively stable dating back 20+ years; while irrigated acreage has increased significantly, the amount of irrigation per acre has decreased almost equally. Agricultural property owners with overlying water rights should not face overly strict Vesting requirements for UO compliance while appropriators and others seemingly are minimally impacted, if we expect buy in. Our society is based upon voluntary compliance for the most part, with enforcement actions a last resort.
- B. Vineyard or other irrigated lands subject to this issue are relatively minor in terms of overall water use in the Basin, most likely in the 1% to 3% range of total Basin annual use when crops are mature in several years, actually after expiration of the UO
- C. Most subject development projects will be complete in 1 to 2 years at most. Thus while it is of immediate and short term future concern, it should not overshadow the larger issues of balancing the Basin. If the issue results in legal battles, the loss of consensus between stakeholders could be far more negative than what positive impact of minimal water savings might be
- D. Procedures need to be clear, verifiable and flexible since development of irrigated lands does not follow a single regimen

EXHIBIT C

There are several reasons for variability in the order of operations using vineyards as an example:

1. Timing of land acquisition with regard to the season of the year
2. Availability of raw materials ranging from infrastructure to nursery plants
3. Variability of nursery stock which can range from dormant vines (also called Dormant Benchgrafts) to potted green plants (aka Green Growing vines). Dormants—similar to bare rootings -- tend to be planted earlier in the season and potted green plants later. (Dormants are on year old plants grown out the season after grafting at in nursery fields; Greens are grafted, then put out in pots for a short period at the nursery for acclimatization under shade cloth usually, then shipped the same year for planting)
4. Funding considerations may dictate a longer development timeline for trellis installation, irrigation system enhancements such as frost protection which may be needed for a growing crop but less so for a vineyard still in development
5. Labor availability – if a owner/operator who may also be the winemaker is self installing a vineyard, he may wish to spread the work over the full year and certainly not during harvest
6. Terrain differences, such as erodible hillsides may result in avoiding heavy tillage or ripping just prior to winter rains
7. Land preparation differences in approach – not all vineyards are ripped or fully tilled. As is now the case with other crops, “no till” approaches are used to reduce runoff, soil erosion and maybe less invasive than conventional deep ripping. Rocky fields may not be as likely to be ripped at all.
8. Finalization of irrigation designs is dependent on final test pumping of new wells. This means an irrigation system cannot be properly engineered until the well(s) are complete and test pumped. The new vineyard may or may not require reservoir storage, but designing and installing the in field drip system supported by its system of valves, regulators and piping is a major investment that must match up to well output.
9. Nursery orders often cannot be finalized when a contracting winery has not finalized its variety choice. That can take more time than a grower would like but can be a fact of life that holds up finalizing an order
10. Revised Vesting resolution language perhaps could address UO Section 3 K “New or Expanded Crop Production” requirement that land irrigated more than 5 years ago is now to be considered ineligible for irrigation without UO compliance measures now encourages irrigation of lands just to preserve the right to irrigate in the future. That is illogical and will actually mean that pumping will increase simply to comply with the UO. Can something be done to perhaps qualify land within the 5 year window (which is far too short and likely unenforceable in a court of law) and then to preserve that qualification to avoid having to irrigate simply to preserve the right to do so in the future? Perhaps wording could be added to the Vesting resolution.
Qualifying within 5 years of the UO effective date of 8/27/13 qualifies the subject property for the future.

As previously mentioned, a Vesting Policy must have sufficient flexibility to fit a range of situations. It also should reflect the fact that there was no possible way to know in advance what the new Urgency Ordinance would cover, nor what the vesting requirements would be. In fact, the latter is still an unknown which puts those who have vineyards in development in a very vulnerable situation. For example, if Ripping was a mandatory component, it would have been possible for more ripping to have been completed. But in some cases, it simply was not planned to take place before 8/27/13 for 2014 planting and, in some cases, may not have been part of a plan at all.

EXHIBIT C

I would recommend the following wording , working off the proposed resolution language:

1. "Satisfactory evidence that an applicant has secured a vested right to complete site preparation, planting or sale of product, as described in 6.A.4 of Ordinance 3246, consists of evidence that the vested areas intended to be planted was fully capable of being planted with its intended crop and meets at least two (2) of the following requirements prior to August 27, 2013".

- a. Nursery order signed and deposit paid per its terms
- b. Ownership or control via Lease of the subject property
- c. Tillage operation is complete if applicable
- d. County permits in hand for wells, reservoirs ,or other related to the subject development
- e. 50% of either trellis, irrigation system or land preparation was either paid for, delivered on site or installed.
- f. Grape production contract from Winery for at least 50% of the subject acreage for a minimum of 5 years of production

2. "Persons or organizations" Paragraph 2, page 2 of 3 is satisfactory, subject to the following addition: . "...and render a written decision within 14 days". It should not be open ended as to when Planning can render the written decision.

3. "Any aggrieved" No change suggested.

Thanks for the opportunity to contribute to the process. We need to get past this issue as we have more pressing challenges to get our Basin into balance, avoid legal battles where possible and avoid jeopardizing our economy.

DM



Urgency ordinance
Gary Kirkland

to:

kgriffin

11/01/2013 10:03 AM

Hide Details

From: Gary Kirkland <gary.l.kirkland@gmail.com>

To: kgriffin@co.slo.ca.us

Thank you for sending me this email and allowing me to respond to the urgency ordinance. I am opposed to the ordinance itself. I am not exactly clear what the differences are between vested rights and property rights. If vested rights means others have the right to control what people do on their own property then property rights disappear.

This country became great and prosperous nation mostly because government respected property rights. In fact, when first founded only property owners paid taxes. This was to prevent government tyranny. Government should protect property rights and prevent vested rights.

As for the water shortage PG&E has a reverse osmosis factory at Diablo Canyon nuclear plant. The county should encourage through tax incentives private entrepreneurs to build reverse osmosis factories on the Pacific coast to meet the water demand in the county. The county has no water shortage. If reverse osmosis is expensive the county has a money shortage. Competition will lower costs and relieve the shortage. The urgency ordinance is unnecessary and a gross misuse of government power. The market can solve this problem.

Thank you.

Gary L. Kirkland
gary.l.kirkland@gmail.com



Re: Outreach - Vested Rights - Urgency Ordinance No. 3246 - Request for Input

David to: kgriffin

11/01/2013 02:11 PM

"Jamie Kirk", "Lynn Cell", "Parrish Family Vineyard", "Cecily Parrish
Cc: Ray", "Ethan Ray", "Susan Steinberger", "Dyan Melikian", "A And P",
"Debby Arnold"

Kami,

Thank you for the opportunity to weigh in on the definition of vested in the emergency ordinance.

I am not only a Paso grower but have a business that designs and installs vineyard trellising. I have been putting in vineyards for 38 years strong!

The best determining factor for a grower to be considered vested with his new vineyard project is simply the ordering of vines. The signing of a vine contract and paying a deposit on the vines before August 27th would be the first commitment for any vineyard project. These contracts are binding and in spite of what your council had told you the grower is absolutely obligated to take the vines he has ordered. There is no way out so he is vested! As far as the timing of when other parts of the vineyard development takes place such as ripping, soil amendments, irrigation, trellis, etc. are actually subject to many other factors. Such as available labor and equipment and personal resources like money, management, and own personal time available.

Using vine contracts with deposits paid before the August 27 date also would limit the number of acres planted this year since vines have been in short supply for the last two years. Also, using the date the grower committed himself to the vines would make it very easy and straight forward for your staff to determine if a grower was vested because they would only have to ask for two items.

Vine contracts

Cancelled bank deposit checks

If they are both dated before the ordinance date the grower would be vested!

Thank you again!

David Parrish
Parrish Family Vineyard

Please find attached my input on the definition of "vested rights" in regards to the Urgency Ordinance recently passed. Because I am sure you have been inundated with comments on this issue, I have tried to present it in simple, outline style. I would be happy to elaborate if desired, but felt brevity might be appreciated at this point!

Thank you for your time in consideration of this.

Randy Diffenbaugh

VESTED RIGHT FROM A FARMER'S PERSPECTIVE

The following 3 components must be present to claim a vested right, and in reverse, the existence of all three of these constitutes a vested right.

1. PURCHASED PROPERTY for obvious use as irrigated cropland – can be easily ascertained both from suitability and purchase price.

-Leased ground does not comply because a lease has not created an irreversible transaction that has materially changed the title and value of the property. A long term (family estate) scenario would be the same as a lease.

2. PURCHASED PLANT MATERIAL – this is a third party contract made in which the third, and non-controlling party, has performed non-reversible actions by propagating a specific amount of plant material based on the contract.

3. HAVE AN ESTABLISHED WATER SOURCE- an existing well

- Under the current situation, the water source, almost certainly a well, would have to have been existing (drilled and cased) prior to the August 27th passage of the Urgency Ordinance. While a permit may have been issued, any well drilled after the 27th would be considered a new water source.

OTHER FACTORS THAT LEND CREDIBILITY, AND SUPPORT BUT DO NOT ESTABLISH VESTED RIGHTS ALONE:

-GROUND PREP –existence of shows expenditure, but lack of completion could be due to financial considerations as well as environmental considerations, such as moisture

-IRRIGATION PURCHASES – really supports item 3, "established water source", and could include materials, installation, as well as engineering.

-SURVEYING – shows intent, but lack of is similar to Ground Prep

-DELIVERY CONTRACTS – shows intent; somewhat problematic if the vineyard owner/developer also is the grape buyer/winery.



Determination of Vested Rights for Emergency Ordinance No. 3246

Chris Cameron

to:

kgriffin@co.slo.ca.us

11/01/2013 03:21 PM

Hide Details

From: Chris Cameron <chris@brokenearthwinery.com>

To: "kgriffin@co.slo.ca.us" <kgriffin@co.slo.ca.us>

Dear Kami,

Our company is still very busy harvesting fruit so please accept my apologies for this 'last minute' response.

As you may be aware, our company, Continental Vineyards, LLC has submitted a document for permission to continue our current planting project. The question of vested rights is a major issue and the determination in relation to our company could have serious negative financial repercussions.

In relation to the determination of vested rights, I offer the following comments:

I agree that the intended area to be planted should be prepared for planting as in land preparation/cultivation, fully surveyed (both for planting and irrigation) with rows/stakes installed. This exercise alone illustrates a firm commitment to continue. The actual cost of surveying, tillage, stakes/posts etc represents REAL cash output and, depending on the crop to be planted, unlikely to be recovered should the project not continue. Ceasing planting after this point would be financially unacceptable. In our case, this represents over \$480,000 alone.

I agree, that if the intended crop is to be irrigated, at least 50% of the irrigation infrastructure be in place. In our case, that has certainly occurred with a new well (fully permitted) drilled and the receiving reservoir pumps and filters complete. Failure to continue would again result in significant financial hardship with the well alone costing in excess of \$230,000.

At this point, I consider that 50% of the planting operation has taken place. The planting of the intended crop is always the last part completed and represents less than 25% of the overall, physical operation. You may not be aware but a new vineyard pathogen was identified in November 2012 which has been named "Red Blotch" Disease. Findings so far have indicated that most vine planting material contains this pathogen and only recently have tests been developed to accurately measure and identify its presence.

Continental Vineyards had ordered and paid the deposit on all the vines for planting of our intended project but, in light of the potential problems with "Red Blotch", we instructed the nursery to 'on-sell' the planting material. We have waited until 'clean' certified material is available before ordering. This means that Continental Vineyards does not have a written contract in place for plants but the intent to purchase is adequate, given the investment made so far.

Of the \$750,000 already spent, plus the cost of restoration of the planned area, being unable to continue planting would be unfair to the extreme.

In closing, I believe that 30% of the overall financial investment justifies the issuance of vested rights. In practical terms this represents well over 50% of the physical aspects of planting.

I would welcome any opportunity to discuss this in person.

Thank you,
Chris

CHRIS CAMERON
Vice President, Director of Winemaking

Broken Earth Winery
~Shimmin Canyon Vineyard~
5625 Hwy 46E
PASO ROBLES, CA 93446

cell: (805) 434-7896





November 1, 2013

VIA E-MAIL/FEDEX

Kami Griffin
Acting Director
San Luis Obispo County
Department of Planning and Building
976 Osos Street, Room 300
San Luis Obispo, CA 93408

Re: JUSTIN Vineyards & Winery ("JUSTIN") - Vested Rights Exemption, Ordinance No. 3246 ("Ordinance")

Dear Ms. Griffin:

JUSTIN is in receipt of your October 22, 2013 Request for Input concerning the Vested Rights Exemption to the Ordinance adopted by the Board of Supervisors on August 27, 2013. JUSTIN submits this letter in response to your Request and appreciates your consideration of JUSTIN's input regarding the Vested Rights Exemption.

The vested rights doctrine has largely developed in the land use development permitting context, and not in the agricultural context. This is not surprising, as agricultural development is not often subject to land use permitting. However, because agricultural land use is a type of land use and because the vested rights doctrine is a species of estoppel, Toigo v. Town of Ross, 70 Cal. App. 4th 309, 321 (1998), general vested rights and estoppel principles can be applied in the agricultural arena. Specifically, the principles of estoppel (and vested rights) can be invoked generally to "prohibit a governmental entity from exercising its regulatory power to prohibit a proposed land use when a developer incurs substantial expense in reasonable and good faith reliance on some governmental act or omission so that it would be highly inequitable to deprive the developer of the right to complete the development as proposed." Id. This is because the "theory of equitable estoppel simply recognizes that, at some point in the development process, a developer's financial expenditures in good faith reliance on the governmental entity's land use and project approvals should estop that governmental entity from changing those rules to prevent completion of the project." Id.

In translating the vested rights doctrine to the agricultural context and specifically to the context of the Ordinance at issue here, JUSTIN maintains that although determinations will be highly individualized, there are several key factors that the Department of Planning and Building should consider in determining whether "applicants" have "secured a vested right to complete site preparation, planting or sale of a product" prior to the Ordinance's "effective date." (Ordinance, Section 6(A)(4)). Such factors include, but are not limited, to:

310.966.8400
Fax 310.966.8810
11444 West Olympic Boulevard
Los Angeles, California 90064

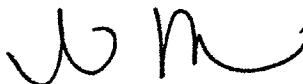
EXHIBIT C

- extent of work done by the applicant in reasonable reliance on existing zoning laws;
- extent of work done by the applicant in reasonable reliance on permits properly obtained;
- extent of the applicant's completion of infrastructure work;
- applicant's purchase of necessary equipment in order to plant its crops;
- applicant's purchase of vines, or other crops to be planted;
- extent of the applicant's completion of soil preparation work;
- extent of the applicant's completion of installation of irrigation systems;
- extent of the applicant's completion of actual planting;
- amount of money the applicant spent on development before the Ordinance took effect;
- amount of money the applicant committed to spending on development before the Ordinance took effect;
- liabilities the applicant incurred before the Ordinance took effect, including contractual liabilities; and
- whether there are possible alternate uses of the applicant's land or lack of alternate uses of the land if the applicant is not granted an exemption.

For further detail on the application of vested rights to the agricultural context, please see JUSTIN's letter to you dated September 6, 2013, which JUSTIN respectfully requests be made part of the record here.

Should you have any further questions, or need any further information, please do not hesitate to contact me. Thank you for your consideration of JUSTIN's input on the Vested Rights Exemption.

Sincerely,

A handwritten signature in black ink, appearing to read 'J M' with a stylized flourish at the end.

Melissa Poole

MEMORANDUM

To: Director of Planning and Building
County of San Luis Obispo

From: Howard N. Ellman

Date: November 1, 2013

Re: J. Lohr Vineyards & Wines: Memorandum in Support of Proposed Definition
of Vested Rights for San Luis Obispo County Ordinance No. 3246

Introduction

This memorandum provides the legal authorities in support of revisions to the definition of vested rights contained in the draft resolution proposed by the San Luis Obispo County ("County") in its Staff Report dated October 1, 2013. The definition was prepared for the purpose of providing County staff with direction regarding a vested right to complete site preparation, planting, or sale of product under Ordinance No. 3246 (the "Ordinance.")

Relevant Facts

Vineyard development (not including reservoirs) requires no permits or County approval other than the well permits that are an essential component. Under County ordinance well permits are "ministerial," meaning that the County has no discretion to deny them so long as they meet a set of specific criteria, which is also true of building permits.

The well permit applications disclose parcel size and intended use of the well for irrigation when completed. Thus, when the County issues a well permit, the County is on notice of the intended use and the scope of the use that the well(s) would facilitate and support.

The County zoning ordinance also specifically exempts agriculture projects from land use permits. This provision of the zoning ordinance, together with the well permits, provides the regulatory context in which J. Lohr and other vineyard owners and operators had purchased properties and incurred substantial financial liabilities and undertaken site work, relying upon the regulatory framework in place prior to adoption of the Ordinance. That process was expressly supported by the County General Plan and zoning ordinance, in addition to well permit approvals up until the adoption of the Ordinance.

Director of Planning and Building
County of San Luis Obispo
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The California Law of Vested Rights

Most of the California vested rights authorities deal with a claim of vested rights based on a specific governmental action such as a zoning ordinance or conditional use permit. The principles those cases articulate readily apply to Lohr's situation

The decision of the Court of Appeal in *Raley v. California Tahoe Regional Planning Agency* (1977) 68 Cal.App.3d 965, 974-75 succinctly summarizes the relevant principles. The Court begins with an analysis of *the equitable estoppel doctrine* that lies at the heart of the vested rights concept:

"The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. The elements of the doctrine are that (i) the party to be estopped must be apprised of the facts; (ii) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (iii) the other party must be ignorant of the true state of facts; and (iv) he must rely upon the conduct to his injury." (*Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725.) Equitable estoppel may be applied against the government where justice and right require it and "in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-97).

The Supreme Court and Court of Appeal applied the equitable estoppel doctrine in *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 793, 795. The *Avco* opinion is generally regarded as the leading authority on vested rights. That Court endorsed the equitable estoppel approach, stating:

It has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. Once a landowner has secured a vested right the government may not, by virtue of a change in the zoning laws, prohibit construction authorized by the permit upon which he relied.

Director of Planning and Building
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Avco, supra, 17 Cal.3d at 791.

Notwithstanding that sweeping endorsement of the equitable estoppel principle, the *Avco* court went on to conclude that nothing short of a building permit would signify the definitive nature of the governmental action as required for the second element of the equitable estoppel test articulated in *Raley*. To the same effect, see *Oceanic California, Inc. v. North Central Coast Regional Commission* (1976) 63 Cal.App.3d 57, 71. In those cases – and others that have adopted the building permit requirement – *the landowner sought a vested right to construct a building or buildings as against a later adopted, prohibitory enactment.*

The Courts have generally required that vested rights be based upon a building permit in any cases where a party is seeking a vested right for construction of a particular building or group of buildings. See *Raley, supra* at 68 Cal.App.3d 975, fn. 5. But that does not apply to a case such as the Lohr situation, where no building permit is required for exploitation of the groundwater resources that the well permits Lohr obtained clearly contemplated.

The County did not approve the wells as separate and distinct projects. It approved the wells in an application process requiring a showing of projected well output, the purpose for which the water would be used, the acreage served among other information. In short, the County did not approve the wells as free-standing entities, but rather as integral parts of a projected operation that the applications for the permits clearly defined.

For purposes of this analysis, it is significant that *building permits are considered ministerial* except when issued for extraordinarily complex, large projects that inherently require exercises of discretion by the permitting authority in the decision making process. See, e.g., *Friends Of Westwood v. City of Los Angeles* (1997) 191 Cal.App.3d 259. County's well permits are also considered ministerial. Thus, these are not cases where the existence of vested rights depends upon a showing that the permit upon which the claim of vested rights is based represents the "last discretionary act" in an approval process.

If a building permit, i.e., a ministerial act, is required in order to establish vested rights under the rule of *Avco* and its progeny, why not well permits as the basis for vested rights in this context, where the wells so permitted are issued in a process where the scope and purpose of their intended use is clear from the applications to which the permits respond?

City of West Hollywood v. Beverly Towers, Inc. (1991) 52 Cal.3d 1184 provides a helpful precedent, as it was a case where a party claimed a vested right under approvals that did not include a building permit. In that case, a condominium converter had filed the documents necessary to convert a rental apartment development to condominiums, including obtaining approval by the city of a condominium subdivision map and approval to sell condominiums from the Department of Real Estate pursuant to the Subdivided Lands Act (Bus. & Prof. Code § 11000 *et seq.*).

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Significantly, however, the developer had not sold a single unit. *Under California law, sale of the first unit is a legal requisite to perfection of a condominium plan.* In other words, the developer could legally have amended or revoked the plan prior to the sale of the first unit. Nonetheless, the Supreme Court held that the developer had a vested right to proceed with sales of its units without complying with a subsequently enacted conversion control ordinance enacted by the City of West Hollywood.

The court effectively relied upon a principle of equitable estoppel; i.e., the government body involved had approved a definitive plan and should be bound to it, notwithstanding the public policy considerations that could be invoked in support of the new, limiting enactment.

In *Trans-Oceanic Oil Corporation v. City of Santa Barbara* (1948) 85 Cal.App.2d 776, the property owner obtained a permit from the City to drill an oil well. It constructed concrete foundations, erected a derrick, constructed additional improvements and laid pipe. Before it could drill the well, however, the U.S. declared war on December 8, 1941. 85 Cal.App.2d at 780. By that point, the property owner had incurred \$4500 in expense in preparation for drilling. The War created a hiatus until January, 1945. On April 9, 1947, the City Council purported to revoke the well permit. *Id.* at 781.

The property owner sued, claiming that it had a vested right to complete and operate the well. The Court agreed, holding that when a property owner obtains a permit and incurs expense in reliance on it, he or she acquires a vested right that cannot be taken away without compensation. The Court reached its conclusion after an exhaustive review of precedent from other jurisdictions in addition to California. See *Id.* at 783-87. It is clear that fairness and equity provides the touchstone for all of the cases cited.

All elements of equitable estoppel are present in the current situation here as in *City of West Hollywood* and *Trans-Oceanic Oil*; a definitive approval of well permits by the County with knowledge of the intended use of those and related improvements; and reliance in the form of substantial expenditure and significant work on the ground, all incurred and undertaken for the purpose of carrying out a vineyard development plan. The work would not have had any other purpose as the County knew, with its familiarity with the horticulture involved.

Proposed Definition of Vested Rights

Based on a thorough review of California vested rights law and the County permits and exemptions provided for per County Ordinance the following definition of vested rights is proposed¹:

Satisfactory evidence that an applicant has secured a vested right to complete site preparation, planting, or sale of product, as described in Section 6.4.A of Ordinance

¹ J Lohr reserves all legal rights to pursue all available legal and equitable remedies whether they exceed those provided for in its proposed definition of vested rights.

Director of Planning and Building
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3246, consists of evidence that meets all of the following requirements and time limitations:

- a. All required well permits have been approved and wells installed prior to August 27, 2013; and
- b. At least 50 percent of total project development costs have been either spent or are contractually committed as of August 27, 2013; and
- c. Both of the following conditions have been met as of August 27, 2013:
 - i. At least 50 percent of the area intended to be planted has been disked or tilled; and
 - ii. Plants intended to be planted (i.e. rootstock) were delivered to the applicant, or the applicant has contracts for future delivery of the plants intended to be planted.

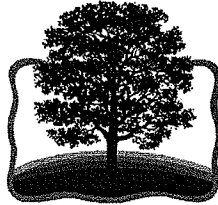
Conclusion

California vested rights law requires that the County adopt a definition of vested rights that will allow projects that have approved well permits, substantial expenditure and significant work on the ground to proceed with the development the developer contemplates and of which the County is on notice. It would be grossly inequitable to subject projects that meet the criteria proposed herein to a moratorium this late in the process when they have proceeded in good faith and secured the only permits that the County requires for the work it contemplates.

Respectfully submitted.



Howard N. Ellman, Esq.
BUCHALTER NEMER
A Professional Corporation
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
(415) 227-0900
hellman@buchalter.com



North County Watch

Looking Out Today For Tomorrow

Memo to: Kami Griffin, Director of Planning and Building

From: Susan Harvey, North County Watch

RE: Interim Ordinance and vested rights

November 1, 2013

Sent via Email: kgriffin@co.slo.ca.us

Kami:

Thank you for your request for comments on the Interim Ordinance vested rights guidelines.

The Urgency Ordinance is only the first step to managing the basis and responding to the crisis that impacts the water supply for 29 percent of the county's population.

During the hearing process, agricultural representatives sought and received an exemption for large agricultural ponds, some measuring 50 acre feet or more. In September applications were pending for seven new ag ponds totaling 255 acre feet.

Agriculture also sought and received the removal of the urgency provision requiring a 2:1 offset of any new water use. This was replaced by a 1:1 offset, which, even if effective, simply locks in the current rate of basin decline.

Having already compromised the potential for the ordinance to make any headway toward basin balance, we support stringent standards for determination of vested rights because each new acre planted is increasing the basin deficit over the lifetime of the vineyard. It is our position that applicants have no vested right to proceed with agricultural development that is not compliant with the terms of the Interim Ordinance after August 28th, the date of adoption of the ordinance.

The question here is at what point in the continuum of planning a project, whether it requires a permit or not, is the activity beyond the reach of the county to enforce or apply new regulation or rules. This is not an insignificant issue. This decision on vesting rights will set an important precedent that may put the police powers of the county and future Boards at risk.

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North County Watch P.O. Box 455 Templeton, CA 93465
501(c)(3) nonprofit corporation (77-0576955)

EXHIBIT C

We do not believe that a case for a vested right to plant after August 28th can be made. One of the bright lines of judicial review of vesting right is the ability to make the case for "good faith" planning. In light of the many years of public study of the basin, including the declaration of Level of Severity III in February 2011, and the recent extensive publicity, it is simply not possible for any applicant to make the case that good faith investment secured their vested right. No one will have been denied any viable use of the land which is historically dry farmed cattle grazing land. The land is still economically viable. No remedial injury has occurred.

If we consider the reasonably anticipated investment value of a project/planting, the site preparation and all the way up to and including plants in the ground are a small fraction of the anticipated investment values and do not create a vested interest.

Again, our position is that there is no vested right established that would relieve compliance with the Interim Ordinance. If the county is going to proceed with allowing planting outside of compliance with the Ordinance, at a very minimum, the following requirements should be adhered to:

- A cutoff date for acceptance of vesting applications is essential.
- Applicants must be required to install meters and report use.
- Base value of the land should not be considered in determining vesting. If land ownership or value were considered, every landowner would be in a position to claim a certain level of "vested" and economic viability has not been removed.
- A market based cost per acre for planting should be adopted based on current industry costs as the starting point. For example, if the current cost per acre to install vines from raw land to plants in the ground is \$30,000 per acre, the cost to plant 100 acres would be 3 million dollars. It is our recommendation that at least 80% of the total cost should have been expended, out of pocket, as of the cutoff date. If the applicant wishes to proceed with the project but can only show 40% expended by the cutoff date, he could proceed by offsetting 60 acres at a 1:1 offset and complying with all other provisions of the Interim Ordinance. This standard may seem restrictive unless you consider that those 100 acres will very likely be grossing between \$600,000 and \$1,000,000 annually in as short a time as 5 years and consuming between 150 to 250 AF/year of water from decades from a basin already in overdraft. Clearly, planting costs are a very small percentage of reasonably anticipated investment value. In our example, 2.4 million (80%) would be out of pocket by cutoff date but over a ten year period, the gross return could be 8 million dollars or more and certainly much higher over the life of the project. Or, looking at it another way, the investment dollars could see a 300% gross return in 10-15 years. If industry leaders disagree with this assessment, they should show the public the numbers to refute these assumptions of investment and return.

The standards for establishing any right of vesting must be stringent because the crisis is huge. The risk of degradation and loss of water to nearly 80,000 people must be part of the risk assessment. The risk goes far beyond what any one individual has spent. This will set a precedent for future claims of vesting that could have long term negative ramifications in all aspects of county governance. There is no injury to be remediated and the land has not lost economic viability. There is no basis for a claim of good faith effort.

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North County Watch P.O. Box 455 Templeton, CA 93465
501(c)(3) nonprofit corporation (77-0576955)

EXHIBIT C

And finally, if the county is establishing vested rights beyond "plants in the ground by August 28th", it must make findings that vesting additional acreage in a basin in severe overdraft and that has likely been mined for years, is a reasonable and beneficial use of water. The county has been derelict in its management of the basin, endangering the health and safety of residents, creating a public nuisance, and ignored the co-equal standing of public trust assets.



Definition of Vesting of Agricultural Planting in the Paso Robles Groundwater Basin
danrlloyd

to:

kgriffin@co.slo.ca.us

11/01/2013 04:41 PM

Cc:

"jcaruso@co.slo.ca.us"

Hide Details

From: danrlloyd@yahoo.com

To: "kgriffin@co.slo.ca.us" <kgriffin@co.slo.ca.us>

Hello Kami,

Thank you for soliciting comments from the public regarding what actions, steps, or commitments by agriculturalists represent sufficient evidence that they have a "vested right" to plant water consuming crops within the basin during this moratorium period.

Vesting can be strictly interpreted as only those actions that are substantiated by contract law (the signing of a contract with or without some form of monetary payment), or more broadly interpreted by some to be a little as a "hand shake" between honorable parties. And from the perspective of those who embrace the former definition, there is no middle ground. However, agricultural practices or preparation for planting are not the same to all. That is to say, there is no "one size fits all" definition that will result in a fair and equitable imposition of regulatory restrictions. The goal that I believe we should strive to achieve is to strike a balance between the two extreme definitions and recognize that not all intentions are concretized in through the execution of a contract, nor are mere statements of intent sufficient to entitle someone plant unabated within the basin.

Here are my thoughts on the "vesting" issue:

1) An applicant for vesting shall provide correspondence (emails, contracts, letters, or voice conversations) outlining a contractual or financial commitment to purchase plants or hire labor or services to implement the planting of new agricultural products on property within the basin. This could be evidenced by a commitment of a property owner, a lessee, or a tenant.

2) An applicant for vesting shall provide evidence of an intent to pursue or implement the planting of new agricultural products through the filing of an application for a Williamson Act Contract, or the payment of a fee and attendance at a Pre-Application Conference where the planting of agricultural products was specifically discussed and parameters outlined as a prerequisite to following through with such a contract. This action by an applicant would have to have been initiated prior to the noticing of the first public hearing to consider curtailing planting within the basin.

3) Denial of "vesting" **shall not** be based on the whether a new well has been drilled, the ripping of native ground has not occurred, or the installation of irrigation system components have not been installed. In recognition of "just-in-time" (JIT) practices that are based on deferring expense until the anticipated planting related activity is absolutely essential, please be mindful that planning for the installation of agricultural products is not always based on these artificial standards, especially when the moratorium was initiated in the summer months.

4) The County shall create a seven (7) member "Appeals Board" composed of a 2 County staff members, 2 growers in the basin, 2 non-agricultural business proprietors or managers, and 1 retired judge to hear appeals from applicants who have been denied vesting by the County.

Thank you for allowing the public to comment on the issue of vesting. If you have questions regarding my perspective on the issue, please contact me at 441-2454.

Dan Lloyd

SAN ANTONIO

W I N E R Y

November 1, 2013

San Luis Obispo County Planning Department
Kami Griffin, Assistant Director
1055 Monterey Street D170
San Luis Obispo, CA 93401

Re: Vested Rights Outreach for Urgency Ordinance No. 3246

Dear Ms. Griffin:

Thank you for allowing us to provide input regarding the criteria for the vested rights exemption to Urgency Ordinance No. 3246. We at San Antonio Winery have given much thought to the best way to balance the significant investments we have made toward our new vineyard with the County's need to address groundwater overdraft in the Paso Robles Groundwater Basin. In response, we have outlined the following proposed criteria for County staff to consider when presented with a request for an Ordinance 3246 vested rights determination. Prior to August 27, 2013:

1. The applicant obtained a well drilling permit from the County and said well had been drilled, thereby establishing an overlying water right.
2. The applicant expended significant financial investment to establish an irrigated crop. The evaluation of such financial investment would reflect the realities of farming investments, which include planting and development in phases for proper soil and crop rotation. Financial investment criteria would include: ground preparation (i.e. ripping, disking, and/or tilling); infrastructure installation (i.e. irrigation, stakes, fencing); studies and assessments (i.e. engineering studies, land and soil surveys); permits and associated assessments; and procurement of marketing and/or design materials (i.e. federal trademarks, logos, labels). This criteria would be evaluated by the County on a case-by-case basis, and in light of all the applicant's expenditures related to an overall business plan prior to the enactment of the ordinance.

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SAN ANTONIO

W I N E R Y

3. In addition to those pre-existing contracts proposed by the County in Section 1(c), the following are contracts that should be taken into consideration if they were obligations committed to as part of an overall business plan. The applicant: (a) must either accept or reject future delivery of plants, but must pay the full balance of the contract price regardless; (b) paid a non-refundable deposit toward the purchase of the plants; (c) must deliver all or part of the yield produced from the plants and such yield cannot be substituted; or (d) must make mortgage or ground lease payments for the land upon which the irrigated crop would be planted based on the planted value of such property, which (i) property supports no other use but farming and (ii) cannot be terminated with the landlord just because the applicant cannot plant the intended crop.

Please contact me with any questions regarding our proposed criteria. I can be reached via email at anthony@sanantoniowinery.com or via cell phone at (323) 497-5881.

Very truly yours,



Anthony Riboli
San Antonio Winery

WILD, CARTER & TIPTON
A Professional Corporation
ATTORNEYS AT LAW
Founded in 1893

246 WEST SHAW AVENUE
FRESNO, CALIFORNIA 93704
Telephone: (559) 224-2131

Our File No.: S957-001
Email: tagrall@wctlaw.com
Direct Fax: 559-229-7295

TRACY A. AGRALL
Of Counsel

November 1, 2013

Via E-Mail and U.S. Mail

Kami Griffin, Acting Director
San Luis Obispo County
976 Osos Street, Room 300
San Luis Obispo, CA 93408

Re: Vested Rights - Urgency Ordinance No. 3246

Dear Ms. Griffin:

This office represents the Sran family, owners of several agricultural properties which are impacted by San Luis Obispo County Urgency Ordinance 3246. This letter is to present our comments regarding the definition of "Vested Right" as used in the proposed Resolution under this Ordinance.

We believe the requirements as proposed are too restrictive and do not allow property owners a chance to prepare for the implementation of the Ordinance. We believe that those asserting a vested right should have a phase in period to allow for the completion of projects which are significantly in the works.

The proposed Resolution, at Section 1a., requires "100 percent of the area" to be prepared for planting prior to August 27, 2013." The Ordinance was implemented without any prior notice. A requirement of "100 percent" allows no leeway for those who have invested significant sums in the process of readying their land but who have not quite finished. We propose the requirement be less than 100 percent and in line with recognized agricultural standards if the date will be retroactive. Fairness dictates that someone who has substantially completed preparation should not be penalized.

The proposed Resolution, at Section 1b., requires that "All wells ...were installed as of August 27, 2103." Again, property owners who are in the process of installing a well had no

WILD, CARTER & TIPTON

Kami Griffin

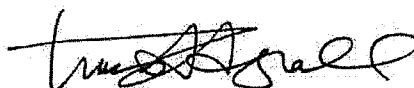
November 1, 2013

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advance notice of this ordinance. This process takes a significant investment of time and money before the actual drilling can occur. The Ordinance and the proposed Resolution do not allow for completion of matters that have been started (and approved by the County). Rather, the Ordinance and proposed Resolution set an arbitrary, retroactive date, which stops projects in mid-stream. To avoid substantial losses to a property owner, we would propose a phase in period for the installation of wells rather than a requirement that they be completed by a date certain.

We request that we be added to any mailing list developed for this matter. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy A. Agrall", with a stylized, cursive script.

Tracy A. Agrall

TAA:abm

cc: Lakhy Sran



Fw: Vesting/Exemptions from Ground Water Basin "Solution"

Debbie Arnold to: Kami Griffin
Sent by: Jennifer Caffee

11/04/2013 04:41 PM

FYI

Debbie Arnold
Supervisor, 5th District
San Luis Obispo County
(805) 781-4339

----- Forwarded by Jennifer Caffee/BOS/COSLO on 11/04/2013 04:39 PM -----

From: Dean at Rockin R Winery <rockinRwinery@att.net>
To: Debbie Arnold <darnold@co.slo.ca.us>, Frank Mecham <fmecham@co.slo.ca.us>, bgibson@co.slo.ca.us, ahill@co.slo.ca.us, cray@co.slo.ca.us
Cc: "rockinRwinery@att.net" <rockinRwinery@att.net>, Heidi Vorwick <hvorwick@gmail.com>
Date: 11/04/2013 03:36 PM
Subject: Vesting/Exemptions from Ground Water Basin "Solution"

Date: 11/1/2013

To: San Luis Obispo County Board of Supervisors

From: Dean DiSandro, Rockin' R Winery

Re: Vesting and Exemptions from Ground Water Basin "Solution"

Honorable Supervisors,

Now that you have put a 2-year water moratorium in place, effectively stripping thousands of parcel owners of their rights under the California constitution, I will stop making broad policy arguments applicable to all parcels, and focus instead on MY OWN rights which your action are effectively taking away.

My own facts and circumstances should be clearly juxtaposed with the "suffering" of a hand full of parcel owner who have recently had to replace old, shallow wells with deeper, modern wells (at approximate costs of \$25,000 each):

1. Over 20 years ago, I bought a nearly 20 acre Ag-zoned parcel in the heart of wine country (on Dresser Ranch, a private road) with a long term plan to build the two homes allowed on that parcel under its zoning, and ultimately plant 10 - 12 acres of grapes to be used by a small winery I would create. We started out with a small mobile home and later built a larger family home.

2. In 2006, we bought another nearly 20 acre Ag-zoned parcel on a county collector road (Union Road, which was surrounded by vineyards and tasting rooms) in order to start a small winery and tasting room on that land-use appropriate parcel. We ultimately intend to plant 10 - 12 acres of grapes to be used by that small winery (in addition to and in conjunction with grapes from our other parcel, #1 above). While this parcel has one home on it, our plans are ultimately to build another as well (as permitted by the zoning when we acquired the parcel and to this day).

3. From 2007 - 2008, we suffered the long and costly process of obtaining a county land use permit to operate a winery and tasting room on our Union Road parcel.

4. We have been purchasing grapes from neighboring vineyards since starting as hobbyists in 2002, then commercially starting in 2007, and continuing to date. However, it has always been our stated intention (i.e., as written in our land use permit documentation) to plant grapes on our lands to be used by our winery and tasting room once that business model was firmly established.

5. In 2009, we opened our tasting room and released our 2007 & 2008 vintage wines. We have since operated continuously per our land use permit conditions and business plans, working hard to build our wine brand to a size which would be appropriate to planting the 20 - 24 acres of vine-worthy acres we have at our two locations. At 2 - 4 tons of grapes per planted acre, our lands could yield 40 - 96 tons of grapes annually, which translates to 2,000 - 4,800 cases of production and dovetails perfectly with our small, family winery business plans.

6. Your recent moratorium threatens to rob us of 20 years of effort since it takes away and/or substantially encumbers our rights to:

a) Develop a second home on each parcel (as is otherwise allowed under the zoning in place since we came here in 1987);

b) Develop 10 - 12 acres of vineyards on each of these parcels (as was otherwise previously permitted in this "right to farm" county);

c) Provide ourselves with the grape quality, volume and cost structure we need to stay in business for the long term (your moratorium will exacerbate an already increasing grape shortage and accelerate the substantial price increases which are already occurring);

d) Provide ourselves and our families with the additional homes needed to live and operate this small yet growing family business;

e) Access and use our fair share of the water available beneath of lands for domestic and agricultural purposes.

7. In total, we have invested nearly \$3 million in these long term plans in reliance upon (i) the existing zoning of our parcels, and (ii) California's constitutional guarantee that we can access and use our fair share of the water beneath our lands.

8. Your "urgency" moratorium threatens to completely subvert and destroy these careful plans which we have been pursuing diligently and systematically for over 2 decades!

The Board of Supervisor's misguided decision to change the rules on our family farm so drastically (and so quickly under the guise of "urgency"!) is horribly unfair and *unconstitutional* . Left unchanged, your actions threaten to destroy our small business and all of our in-process plans. Your staff members have previously urged patience, asserting that vested rights will be carved out so as not to unfairly pull the rug out from those who have been planning, working and investing in the local wine industry. The time to define those vested rights is now, and our investments MUST be protected.

This is why you MUST either (i) provide us (our lands, and the lands of others similarly situated) with specific "grandfathering" exemptions, or (ii) develop "vesting" guidelines such that both of our related parcels/projects can move forward within the previously defined and agreed time frame (i.e., commencement of construction on the final element, an expanded winery and tasting room on Union Road, in addition to vineyard plantings, by the end of 2019).

Please contact me at your earliest opportunity to discuss how our many years of work and investment can be saved from the draconian ruin threatened by the Board's recent blanket moratorium.

I look forward to hearing from each of you soon.

Dean DiSandro, J.D., M.B.A.

Ranch Owner (District 5)
Winery Owner (District 1)
Real Estate Broker (county wide)
Real Estate Developer (state wide)
Management Consultant (state wide)

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EXHIBIT C



To: <kgriffin@co.slo.ca.us>
Cc:
Bcc:
Subject: Vested Rights
From: "Joy Fitzhugh" <joy@slofarmbureau.org> - Thursday 11/07/2013 03:13 PM

History: This message has been replied to.

Dear Kami,

I would like to make a few comments relating to the issue discussed yesterday.

I am glad that there was a meeting and that there was discussion regarding vested rights. If I had been there I would have liked to have addressed the following:

- As every operation/project is unique, be it grapes, apples, alfalfa, row crops or a homeowner's new home or expansion, it would appear that a hard and fast regulation/requirement would not be appropriate. With this in mind I think that looking at each project on a case-by-case basis is the correct direction. Within that case-by-case discussion there may be logic in cutting off the time for applying for vested rights as only approximately 6 applicants for vesting has come forward as of your meeting.
- I agree that applications could be turned into the County relating to vesting till the end of 2013. This is not saying that the applicant can't plant new, disk or do other preparations after that time if there is a vested right, only that the applicant must file the application for vesting.
- There needs to be a lower acreage limit after which a grower is exempt from the vested right procedure, maybe less than 10 acres/5 acres?
- One of the major concerns that needs to be considered in the case-by-case/one-on-one review for vested rights is, can the applicant/grower/homeowner recover the expense prior to the August 27, 2013 Board of Supervisors action; I.e. is the contract and/or financial deposit non-refundable? If so than this is a significant investment and a vested right and should be honored.
- There are obvious physical signs of vesting such as wells, plants, irrigation system. I am more concerned with the financial commitment, whether by an agriculturalist or homeowner.

JOY FITZHUGH
San Luis Obispo County Farm Bureau

EXHIBIT C



To: kgriffin@co.slo.ca.us,
Cc:
Bcc:
Subject: Submission for today's presentation
From: Daniella Sapriel <daniella@hummingbirdhouse.org> - Wednesday 11/06/2013 10:29 AM

History: This message has been replied to.

1 attachment



photo.jpeg

HI Kami,

I was planning on bringing this today as my presentation on the vested rights issue on behalf of the Coalition of Rural Residents and Landowners. CORRAL is a group of residents and landowners who are working to educate the decision makers on the water and other land use issues, in the hope that our input will help bridge the divide between the two main groups (PROWE and PRAAGS) who have actually undertaken the task of structuring a water management system that is fair to all. CORRAL is a non partisan group of rural residents and landowners who want to see the two sides come together to solve this issue. We feel that some of the information on vested rights has been confusing, and we hope this presentation will help clarify the issue.

Thanks.
Daniella Sapriel
CORRAL

"Vested Right" is not the same as "Legal Right"
Vested Right = Equitable Remedy

Requires "Clean Hands"

These questions just start the process.

Claimant must also pass due diligence test
What date did owner start land preparation?
How much money was expended before August 27, 2013?

What percentage of the project was completed by August 27, 2013?

Did owner obtain all necessary permits?
How many additional acres remain to be planted?

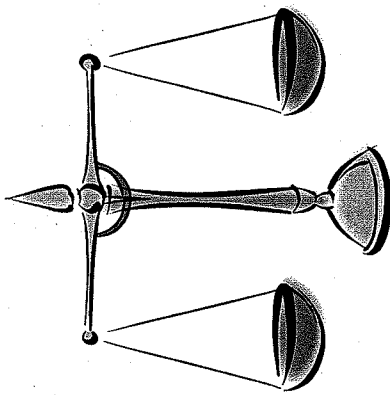
What contracts remain unfulfilled?

What penalties could be imposed if contract breached?

Is project so small as to have little impact on the basin?

"Clean Hands" requires "Due Diligence"

Fairness requires consideration of impact on all affected landowners.



Fairness is not a formula – it's a balancing of equities

Due diligence / Knew or should have known

- Did owner perform due diligence?
- Did owner act in good faith without knowledge of groundwater issue?
- Was property purchased after LOS III declared in 2011?
- Was project started after LOS III declared in 2011?
- How much of project was completed before LOS III?
- Is owner sophisticated buyer speculating on future profits or family farmer whose livelihood depends on project completion?
- Can knowledge of LOS III be imputed to owner?
- Can knowledge of drought conditions be imputed to owner?
- Can knowledge of traditionally dry-farmed areas be imputed to owner?
- Can knowledge of groundwater basin issues be imputed to owner?
- Can knowledge of impact on neighboring wells be imputed to owner?
- Are projects in areas known to have suffered multiple failing wells, e.g. El Pomar, Creston Geneseo?
- What percentage of project was completed before August 1, 2013? Between August 1 and August 27?
- Has owner done everything possible to avoid depleting neighboring wells? (e.g. not filling multiple reservoirs prior to needing the water so as to avoid straining aquifer in summer?)
- Is owner willing to adopt dry farming techniques?
- Has owner provided documentary evidence to support any claims of funds expended?
- What efforts has owner made to mitigate damages (e.g. resell plants or ask for relief from contract?)
- How many acres are in project?
- How many acre feet of water will project use annually?
- Is owner willing to meter and report water usage?
- Is owner willing to compensate neighboring owners with affected wells?

EXHIBIT C

PROPOSED ADDITIONS TO VESTING DEFINITIONS
submitted by Dean DiSandro, Rockin' R Winery

Stakeholders' Suggested Language Regarding Vested Rights
Under Ordinance No. 3246

County staff shall use the following procedure when presented with a request for an Ordinance 3246 vested right determination:

3. Parcels shall be categorically exempt from Ordinance 3246 in its entirety where the Applicant can demonstrate that (1) Applicant owned the parcel(s) prior to August 27, 2013, (2) the parcel(s) are zoned Agricultural, Rural Lands or Rural Residential, (3) Applicant has previously been granted a conditional or minor land use permit from the county for agricultural production, processing or sales related to the Agricultural use proposed, AND (4) Applicant has previously relied upon and acted upon such permit in any substantial way (i.e., filing for a building permit, commencing building, or begin business operations based upon such entitlements).

1. Satisfactory evidence that an applicant has secured a vested right to complete site preparation, planting, or sale of product, as described in Section 6.A.4 of Ordinance 3246, consists of all of the following:

- a. Evidence of a valid well permit applied for and issued pursuant to Chapter 8.40 of the County Code prior to August 27, 2013.
- b. Evidence that a well has been installed onsite pursuant to the valid well permit described above, or evidence that a contract was entered into with a licensed well driller prior to August 27, 2013 for installation of the well.
- c. Evidence that the applicant owned the land prior to August 27, 2013 or had entered into an irrevocable lease for the specific purpose of agriculture prior to August 27, 2013.
- d. For permanent crop types (i.e. vineyard, orchard, tree fruits, tree nuts) evidence shall be provided to show that at least three (3) of the following requirements have been met prior to August 27, 2013:
 - i. The applicant was contractually obligated to accept future delivery of the plants intended to be planted and all contractual conditions precedent to accepting future delivery of said plants were satisfied including a deposit paid towards the full cost of the contract or the plants intended to be planted (i.e. rootstock, trees) were delivered to the applicant.
 - ii. The applicant has entered into a contract , including paying a deposit towards the full cost of the contract, for the design and installation of irrigation infrastructure (such as tanks, pumps, underground piping) required to supply water to the area intended to be planted or such infrastructure has been installed in the area intended to be planted.
 - iii. 100 percent of the area that is intended to be planted has been

ripped, disked or tilled

or other observable and evident site preparation for the intended crop has occurred.

iv. If the crops are intended to grow in rows, the rows have been surveyed and staked or clearly identified or other observable work such as trellis installation has occurred.

v. Any fencing required to maintain the crop has been installed.

vi. The applicant was contractually obligated to provide product from the area that is intended to be planted within a specific time frame that would require that the area be planted within the time frame the Ordinance 3246 is in effect.

e. For annual crops (i.e. grains, field crops, vegetables, field fruits, flower fields and seed production, ornamental crops, irrigated pasture) evidence shall be provided to show that at least two (2) of the following requirements have been met prior to August 27, 2013:

i. The applicant was contractually obligated to accept future delivery of the plants intended to be planted and all contractual conditions precedent to accepting future delivery of said plants were satisfied including a deposit paid towards the full cost of the contract or the plants intended to be planted (i.e. rootstock, trees) were delivered to the applicant.

ii. The applicant has entered into a contract , including paying a deposit towards the full cost of the contract, for the design and installation of irrigation infrastructure (such as tanks, pumps, underground piping) required to supply water to the area intended to be planted or such infrastructure has been installed in the area intended to be planted.

iii. 100 percent of the area that is intended to be planted has been ripped, disked or tilled

or other observable and evident site preparation for the intended crop has occurred.

iv. The area that is intended to be planted has had soil amendments appropriate for the intended crop applied.

v. If the crops are intended to grow in rows, the rows have been surveyed and staked or clearly identified or other observable work such as trellis installation has occurred.

vi. The applicant was contractually obligated to provide product from the area that is intended to be planted within a specific time frame that would require that the area be planted within the time frame the Ordinance 3246 is in effect.

2. Persons or organizations wishing to rely on the exemption described in Section 6.A.4 of Ordinance No. 3246 to establish new or expanded irrigated crop production, and/or to convert dry farm or grazing land to new irrigated crop production, will provide the evidence described in Section 1 above to the Director of Planning and Building prior to establishment of, and/or conversion of dry farm or grazing land for, new irrigated crop production, who will review the evidence submitted and render a written decision.

3. The decision of the Director of Planning and Building pursuant to Section 2 above is

EXHIBIT C

equivalent to issuance of a ministerial permit. At the discretion of the Director, any request for an Ordinance 3246 vested right determination that does not meet the evidence described in Section 1 above, may be referred to the Board of Supervisors who will review the evidence submitted and render a decision.